1910.

SUPREME COURT OF THE UNITED STATES.

No. 182.

WILLIAM B. GRANT AND AL., LIB'TS AND APP'TS,

vs.

CORNELIUS POILLON AND AL.

APPEAL FROMT HE CIRCUIT COURT U. S. FOR THE SOUHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John W. Nelson, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of October, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eighty-first.

[SEAL.]

J. W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

WM. B. GRANT et al.
vs.
CORNELIUS POILLON. } 11,423.

I, George F. Betts, clerk of the district court of the United States of America, for the southern district of New York, *in*, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

[SEAL.]

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-sixth day of October, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the said United States the eightieth.

GEO. F. BETTS,
Clerk.

OWEN & VOSE,
Appll's Proctors.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the second day of October, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the honorable Charles A. Ingersoll, district judge—

WILLIAM B. GRANT et al.
vs.
CORNELIUS POILLON et al. } 11,423, '425.

1854, April 24. The libellants file their libel in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court, for the southern district of New York.

The libel and complaint of William B. Grant, William Bradstreet, William L. Flitner, Peter Grant in his own right, and also administrator of the estate of Thomas Grant, deceased, Elizabeth F. Grant, administratrix, William S. Grant and George Bacon, administrators of the estate of Samuel C. Grant, deceased, owners of the American ship Constellation, libellants, against Cornelius Poillon, Richard Poillon, James L. Varick, H. Johnson, Hicks, Bailey, Clark, Dean W. W. Hinchens, C. H. Clark, D. D. Miller, respondents, in a case of action of affreightment, civil and maratime, alleges and articulately propounds as follows:

First. That the libellants, William B. Grant, William Bradstreet, William L. Flitner, Peter Grant, and also the above-named Thomas Grant and Samuel C. Grant, both now deceased, at the several times hereinafter referred to, were the sole owners of the ship Constellation. That said William L. Flitner was then master of said ship, and that all of the libellants, except said Flitner and Bacon, reside in Kennebec county, in the State of Maine; that said Flitner resides in New York county, in the State of New York, and said Bacon in Boston, in the State of Massachusetts.

Second. That the said respondents reside in the southern district of New York, within the jurisdiction of this honorable court.

Third. That the said respondents on or before the 12th day of November, in the year 1849, were co-partners together in said city of New York, under the name, firm, and style, of the Constellation Lumber Company, and being such co-partners, did, under said name, firm, and style, on or about the 12th day of November, A. D. 1853, ship on board the said ship Constellation, then lying in the port of New York, two hundred and thirty thousand six hundred and fifty-five feet of lumber, and twenty-nine thousand seven hundred cypress shingles, to be delivered at the port of Valparaiso, Sandwich Islands, or San Francisco, (the dangers of the seas only excepted,) unto the above-named William L. Flitner, or to his assigns, contracting and agreeing that the freight upon the same, together with 5 p. c. primage, should be, if delivered at Valparaiso, forty-five dollars pr. thousand feet, and fifteen dollars pr. thousand for shingles; at the Sandwich Islands, fifty dollars per thousand feet of lumber, and seventeen and half dollars per thousand for shingles; at San Fran-

cisco, fifty-five dollars pr. thousand feet of lumber, and twenty dollars pr. thousand for shingles.

And then and there took and accepted a bill of lading of said lumber and shingles, which said bill of lading sets forth fully said contract and agreement, and a copy whereof is hereto annexed, marked schedule A.

Fourth. That said ship proceeded upon and completed her said voyage, and delivered said lumber and shingles in like good order and condition as when shipped (dangers of the seas only excepted) unto the said William L. Flitner, at San Francisco, on or about the day of , in the year 1850.

Fifth. That there was due for the freight of said lumber and shingles to San Francisco, with the primage on the same as aforesaid, the sum of $13,944 02. That the said Flitner paid of said sum only $11,494 93, which were the nett proceeds of said lumber and shingles at said port of San Francisco; and that said Flitner did not pay the balance, $2,449 09, or any part thereof, but that the same remains still due and unpaid. And these libellants aver that in the consignment of said lumber and shingles to said Flitner, and in the sale thereof by said Flitner, he, the said Flitner, acted under the employment and authority of said respondents, and solely as their agent and on their behalf.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellants pray that a citation in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said Cornelius Poillon, Richard Poillon, James L. Varick, H. Johnson, Hicks, Bailey, Clarke, Dean, W. , W. Hinchen, C. H. Clark, D. D. Miller, and they be cited to appeara nd answer upon oath all and singular the matters aforesaid, and that this honorable court would be pleased to decree payment of the balance of the freight aforesaid, with interest and costs; and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

WM. B. GRANT and others,
By ELISHA BACON,
Agent.

Sworn this 24th day of April, 1854, before me.

(Schedule A.)

Freight on said lumber, to be delivered at Valpariso, forty-five dollars p'r M. feet, and fifteen dollars p'r M. shingles. At Sandwich Islands, fifty dollars p'r M. feet for lumber, and seventeen and a half dollars p'r M. shingles. At San Francisco, fifty-

five dollars p'r M. feet for lumber, and twenty dollars p'r M. for shingles.

Shipped in good order, and well conditioned by Constellation Lumber Co., on board the ship called the Constellation, whereof Wm. L. Flitner is master, now lying in the port of New York, and bound for Valparaiso, Sandwich Islands, and San Francisco: to say, two hundred and thirty thousand six hundred and fifty-five feet lumber, twenty-nine thousand seven hundred cypress shingles, all on board, to be delivered, being marked and numbered as in the margin, and are to be delivered in like condition at the aforesaid port of Valparaiso, Sandwich Islands, or San Francisco, (the dangers of the seas only excepted,) unto Wm. L. Flitner, or to his assigns, he or they paying freight for the said lumber and shingles as per margin, with 5 p. c. primage and average accustomed. In witness whereof, the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated New York, the twelfth day of November, 1849 to be received and delivered within the reach of the vessel's tackles.

WM. L. FLITNER.

Endorsed: 11,423, U. S. district court. Wm. B. Grant and al. vs Cornelius Poillon and al. Libel. Owen & Betts, libel'ts proctors. Filed Ap'l 24, 1854.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

Filed the 24th day of April, 1854.

Stipulation for libellant's costs, entered into pursuant to the rules and practice of this court.

Whereas a libel was filed in this court, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four, by William B. Grant and others, libellants, against Cornelius Poillon, Richard Poillon, and others, respondents, for the reasons and causes in the said libel mentioned, and praying that a citation according to the rules and practice of the court may issue against the respondents; and the said libellants and surety, parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands, for the sum of one hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and each of them is bound in the sum of one hundred dollars, conditioned that the libellants above named, shall appear and answer to the cause and to interrogatories, and shall pay all such costs

as shall be awarded against them by this court, or in case of appeal, by the appellate court.

WM. B. GRANT and others,
By ELISHA BACON, *Agent.*
ELISHA BACON,
ZENAS D. BASSET, JR.

Taken and acknowledged, this 24th day of April, 1854, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Zenas D. Basset, jr., and Elisha Bacon, parties to the above stipulation, being duly sworn, doth depose and say that they reside in the southern district of New York, that he is worth the sum of two hundred dollars over and above all his just debts and liabilities.

ELISHA BACON,
ZENAS D. BASSET, JR.

Sworn to this 54th day of April, 1854, before me,
GEO. W. MORTON,
U. S. Commissioner.

Recorded the 24 day of April, 1854.
GEO. W. MORTON,
Clerk.

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America, for the southern district of New York, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four, by William B. Grant and others libellants, against Cornelius Poillon, Richard Poillon, James L. Varick, H. Johnson, Hicks, Bailey, Clark, W. W. Hitchins, C. H. Clark, and D. D. Miller, resp'dts, in a certain action, civil, maritime, for a balance of freight moneys therein alleged to be due and owing to the said libellants, amounting to twenty-four hundred and forty-nine $\frac{93}{100}$ dollars, and praying that a citation may issue against the said respondents pursuant to the rules and practice of this court.

Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you cite and admonish the said respondents, if they shall be found in your district, that they be and appear before the said district court, on the sixteenth day

of May next, at the City Hall, in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-eighth.

GEO. W. MORTON,
Clerk.

OWEN & BETTS,
Lib. Proctors.

[Endorsed:] Vol. 11, No. 423, United States district court. William B. Grant and others, vs. Cornelius Poillon and others. Citation. Returnable May 16, 1854. Owen & Betts, proctor for lib. C. Donoho, de'fft and referee as to Miller alone as to others.

I hereby depute Peter Miller to execute the within process. Dated 13 May, 1854.

AB. T. HILLYRE,
U. S. Marshal.

Filed May 16, 1854.

Personally served on Richard Poillon, and Daniel D. Miller, and on Cornelius Poillon, by leaving a copy of within process for him, with his brother, Richard Poillon, at his place of business in the city of New York.

AB. T. HILLYRE,
U. S. Marshal.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the sixteenth day of May, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the honorable Charles A. Ingersoll, district judge—

WILLIAM B. GRANT and others, vs. CORNELIUS POILLON, and others.	11,423.

The marshal having returned on the citation issued in this cause, that he had personally the defendants Richard Poillon, and Daniel D. Miller, and Cornelius Poillon, by leaving a copy of said citation for him with his brother, Richard Poillon, at his place of business

in the city of New York—Mr. Charles Donohue appearing for Cornelius and Richard Poillon.

On motion of Mr. Donohue, proctor for the respondents, Cornelius and Richard Poillon, it is ordered that their appearance be and the same is hereby entered. The defendant D. D. Miller being called, and not appearing, and on like motion of Mesrs. Owen and Betts, proctors for the libellants, ordered default and reference be entered against the said Miller, and an alias citation issued against the other named defendants.

[Endorsed:] Vol. 11, No. 423. United States dis't court for the southern district of New York. William B. Grant and others, vs. Cornelius Poillon and others. Owens and Betts, for
Filed the sixteenth day of May, 1854.

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America, for the southern district of New York, on the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty-four, by William B. Grant and others, against Cornelius Poillon, Richard Poillon, James L. Varick, H. Johnson, Hicks, Bailey, Clark, Dean W. W. Hinchen, C. H. Clark, and D. D. Miller, in a certain action civil, maritime, for a balance of freight moneys therein alleged to be due and owing to the said libellant, amounting to twenty-four hundred and forty-nine $\frac{93}{100}$ dollars, and praying that a citation may issue against the said respondents, pursuant to the rules and practice of this court:

Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, as we have before commanded you, that you cite and admonish the said respondents James L. Varick, H. Johnson, C. H. Clarke, Hicks, Bailey, Clark, Dean W. W. Hinchen, if they shall be found in your district, that they be and appear before the said district court, on the thirtieth day of May next, at the City Hall, in the city of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this twenty-sixth day of May, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-eighth.

GEO. W. MORTON,
Clerk.

OWEN & BETTS,
Proctor.

[Endorsed:] Vol. 11, No. 423, United States district court. William B. Grant and others, vs. Cornelius Poillon and others. Alias citation ag't Varick, Johnson, Hicks, Bailey, Clark, Dean, Hinchen, and C. H. Clark, returnable 30th May, 1854. Owen & Betts, proctors for lib. Filed May 30, 1854.

I hereby depute Peter Miller to execute the within process. Dated May 26th, 1854.

AB. T. HILLYER,
U. S. Marshal.

Personally served upon Wm. G. Clark, and upon Wm. M. Hinchen, David Dean, Wm. L. Bailey, and Gilbert E. Hicks, by leaving copies of within process at their places of business.

AB. T. HILLYER,
U. S. Marshal.

May 29, 1854.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-four:

Present, the honorable Charles A. Ingersoll, district judge.

WILLIAM B. GRANT and others
vs.
CORNELIUS POILLON and others.
} 11,423.

The marshal returns on the alias citation issued in the above entitled cause, William Y. Clark, William H. Hinchen, David Dean, William S. Bailey, personally served, and Gilbert E. Hicks served by copy.

On motion of Messrs. Owen & Betts, it is ordered that a pluries citation issue against H. H. Clark, J. L. Varick, and C. Johnson.

[Endorsed:] Vol. 11, No. 423, U. S. district court for the southern district of New York. William B. Grant and others vs. Cornelius Poillon and others. Order for pluries. Filed the thirteenth day of May, 1854.

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel has been filed in the district court of the United States of America, for the southern district of New York, on the twenty-fourth day of April, in the year of our Lord one thousand

eight hundred and fifty-four, by William B. Grant and others, against Cornelius Poillon and others, in a certain action, civil, maritime, for a balance of freight moneys therein alleged to be due and owing to the said libellant, amounting to twenty-four hundred and forty-nine $\frac{93}{100}$ dollars, and praying that a citation may issue against the said respondents, pursuant to the rules and practice of this court:

Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, as we have often before commanded you, that you cite and admonish the said respondents, James L. Varick, H. Johnson, and C. H. Clark, if shall be found in your district, that they be and appear before the said district court, on the sixth day of June next, at the City Hall, in the city of New York, then and there to answer the said libel, and make their allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the honorable Samuel R. Betts, judge of said court, this thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-four, and of our independence the seventy-eighth.

GEO. W. MORTON,
Clerk.

OWEN & BETTS,
Proctor.

[Endorsed:] Vol. 11, No. 423. United States district court. William B. Grant and others, vs. Cornelius Poillon and others. Pluries citation, ag't James L. Varick, H. Johnson, and C. H. Clark. Returnable 6th June, 1854. Owen & Betts, proctor for lib.

Filed June 6, 1854.

I hereby depute Peter Miller to execute within process.
Dated 30 May, 1854.

AB. T. HILLYER,
U. S. Marshal.

C. H. Clark, one of the defendants within named, not found, and by copy on J. L. Varick and H. Johnson.

AB. T. HILLYER,
U. S. Marshal.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the sixth day of June, in the year of our Lord one thousand eight hundred and fifty-four:

Present: the honorable Charles A. Ingersoll, district judge—

William B. Grant and others vs. Cornelius Poillon and others.	11,423.

The marshal returns on the pluries citation issued in this cause: the defendant, C. H. Clark, not found, and J. L. Varick and H. Johnson served by copy.

Mr. Porter appears for the defendant, J. L. Varick. On motion of Messrs. Owen & Betts, it is ordered a pluries citation issue against H. Johnson and C. H. Clark.

[Endorsed:] Vol. 11, No. 423, U. S. district court for the southern district of New York. William B. Grant and others, vs. Cornelius Poillon and others. Owen & Betts, order pluries. Filed the sixth day of June, 1854.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of Cornelius Poillon, Richard Poillon, and James L. Varick, to the libel and complaint of William B. Grant, William Broadstreet, and others, respectfully shows—

First. That as to the ownership of the said vessel mentioned in the libel, these respondents having no information, except as to one of the libellants, deny the same, but they admit that said was sole or part owner of the said vessel at the time stated in the libel.

Second. That these respondents reside in this district, but some of the other respondents reside out of the said district.

Third. That they deny that respondents composed the company mentioned in the libel, or were co-partners therein, or that they shipped the lumber mentioned in the libel on board said vessel, but they admit that the number of feet stated in the libel was shipped; but these respondents deny that they received or accepted a bill of lading for said lumber.

Fourth. These respondents deny that the said vessel ever delivered said lumber, or that the freight ever became due thereon, and further deny that the said Flitner acted as the agents of respondents in the matter.

Fifth. These respondents further answering, allege that the said lumber was shipped on account of the said vessel and of said company, the said vessel being interested in said company, and that the transaction was a partnership one, and not a subject of jurisdiction in this court.

Sixth. That said Flitner named herein as a libellant was and is interested and one of the parties in said Constellation Lumber Company, and is a proper party respondent herein, and should be

made a party respondent herein, and these respondents pray the same advantage hereof as if exception were taken thereto.

Seventh. These respondents allege that the subject-matter of this suit is one not within the admiralty or maritime jurisdiction of this court, and of which this court has no cognizance.

Eighth. That all and singular the premises herein stated are true.

Wherefore these respondents pray that this honorable court would be pleased to pronounce against the claim of the libellants, and to order, adjudge, and decree that the libel herein be dismissed with costs, or for such relief as may be just.

CHARLES DONOHUE,
Proctor for Resp'ts.

Sworn to before me, this day of December, 1854.

Endorsed: U. S. District Court. Cornelius Poillon et al. ads. William B. Grant and al. Answer. Chas. Donohue, Resp'ts proctor. Rec'd Dec. 14, 1854. Ente.

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The replication of William B. Grant, William B. Bradstreet, and others, to the answer of Cornelius Poillon, Richard Poillon, and James L. Varick, defendants, alleges that the said libellants will aver, maintain, and prove their said libel to be true, certain, and sufficient; and that the said answer of the said defendants is uncertain, untrue, and insufficient; and they humbly pray as in by their said libel they have already prayed.

OWEN & BETTS,
Proctor for Libellants.

To CHAS. DONOHUE, ESQ.,
Respd'ts Proctor.

Endorsed: 11, 423, U. S. district court. William B. Grant and al. vs. Cornelius Poillon and al. Replication filed December 26, 1854.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-third day of January, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the honorable Charles A. Ingersoll, district judge—

WILLIAM B. GRANT and o'rs vs. CORNELIUS POILLON and o'rs. } 11,423.

On filing the order of the district judge, it is ordered that the depositions received this day by mail by the clerk be opened and filed.

[Endorsed:] Vol. 11, No. 423, U. S. district court for the southern district of New York. William B. Grant and al. vs. Cornelius Poillon and others. Order to open and file deposition. Filed the twenty-third day of January, 1855.

U. S. DISTRICT COURT.

WILLIAM B. GRANT and others
vs.
CORNELIUS POILLON and al.

We hereby consent that Owen & Vose be substituted in our place as proctors for the libellants, in the above-entitled action.

OWEN & BETTS,
Lb't Proctors.

Dated July 10, 1855.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on the eleventh day of July, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the honorable Samuel R. Betts, district judge—

WILLIAM B. GRANT et als.
vs.
CORNELIUS POILLON et als.
11,423.

On reading and filing the consent of Owens & Betts, libellants' proctors, and on their motion, it is ordered that Owen & Vose be and they hereby are substituted in the place of Owen & Betts as proctors for the libellants in the above-entitled action.

[Endorsed:] Vol. 11, No. 423, U. S. district court for the southern district of New York. William B. Grant and al. vs. Cornelius Poillon and als. Order for substitution of proctors for libt's. Filed eleventh day of July, 1855.

At a stated term of the district court of the United States of America, for the southern district of New York, held at the City Hall, in the city of New York, on Monday, the twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-five:

1917

Present: the honorable Charles A. Ingersoll, district judge—

WILLIAM B. GRANT and al.
vs.
CORNELIUS POILLON and al. } 11,423, '425.

This cause being called in its order on the calender, ordered hearing.

Pleadings read.

Evidence for the libellants.

Statement of facts agreed on.
Read.
Mr. Owen argues the cause for the libellant.
Mr. Donohue " " " " respondents.
Mr. Owen " in reply.
Cur. adv. vult.

U. S. DISTRICT COURT.

WILLIAM B. GRANT and others
vs.
CORNELIUS POILLON and others.

The following facts are admitted by the respective parties to this action, without prejudice however to the rights of either party to offer proof of such further facts as they may deem material:

First. That on or about the 22d of September, 1849, and prior to the shipment hereafter mentioned, the respondents, together with the libellant, William L. Flitner, entered into an agreement in writing, in the words and figures following, to wit:

We, the undersigned, do hereby agree to take or subscribe for the number of shares of the capital stock of the Constellation Lumber Company set opposite our respective names, the said shares to be valued not exceeding five hundred dollars each.

It is understood and agreed that the amount subscribed is to be expended in furnishing a cargo for the ship Constellation, under the command of Capt. Wm. L. Flitner, on a voyage described below.

The cargo to be composed of lumber and such articles as the company may deem proper; and after the departure of vessel from New York, the said cargo to be under the control of William L. Flitner, who will act in accordance with his instructions received from the company, and be considered their agent.

The voyage intended is from New York to Valparaiso, and in case the cargo cannot be sold at a profit of at least twenty per cent. over and above the cost of the ship, will then proceed to the Sandwich Islands; and in case the market should not here meet the views of the company, the ship will proceed to San Franciso, Cali-

fornia, and the cargo be stored or sold at the discretion of the consignee.

It is further understood and agreed that the cargo shall be consigned to Capt. Wm. L. Flitner, and that a commission of five per cent. be allowed him for the disposal of the same; that freight on said cargo to be as follows:

From New York to Valparaiso, at the rate of forty-five dollars per 1,000 feet of lumber.

" " " " Sandwich Islands " fifty "

" " " " San Francisco " fifty-five "

with primage of five per cent.

That Mess. Hicks & Bailey be the agents of the company at New York, and authorized to collect subscriptions, which are to be paid by instalments of not less than ten per cent. after a notice of three days; that the said agents be allowed two and-a-half per cent. commission on the disbursements and receipts of said company.

P. S.—the number of shares not to exceed twelve.

Names.	No. of shares.	Amount.	Remarks.
Hicks & Bailey,	two.		
Wm. L. Flitner,	two.		
F. Lawrence,	one.		
H. Johnson,	one.		
Jas. L. Varick,	one.		
C. & R. Poillon,	one.		
Clark & Dean,	one.		
W. W. Hinchen,	one.		
C. H. Clark,	one.		
D. D. Miller,	one.		

New York, September 22, 1849. Said agreement be entered into for the purpose of procuring a cargo for said vessel.

Second. That the ship "Constellation," belonging to the libellants, was, at the time of executing the said agreement above mentioned, lying in the port of New York, and the above-named William L. Flitner was then and there master and part owner thereof, being the owner of parts thereof.

Third. That in pursuance of the aforesaid articles of association, the said Constellation Lumber Company purchased and shipped on board the said vessel a cargo of lumber and shingles, and afterwards, and on or about the 12th of November, 1849, the said William L. Flitner executed to the company a set of bills of lading therefor in the usual way; which said bill of lading is in the words and figures following, to wit:

"Freight on said lumber to be, if delivered at Valparaiso, forty-five dollars per M. feet, and fifteen dollars per M. for shingles.

"At Sandwich Islands, fifty dollars per M. feet for lumber, and seventeen and-a-half dollars for shingles.

"At San Francisco, fifty-five dollars per M. feet for lumber, and twenty dollars per M. for shingles.

"Shipped in good order, and well conditioned by Constellation Lumber Co., on board the ship called the Constellation, whereof Wm. L. Flitner is master, now lying at the port of New York, and bound for Valparaiso, Sandwich Islands, and San Francisco, to say:

"Two hundred and thirty thousand six hundred and fifty-five feet lumber, twenty-nine thousand seven hundred cypress shingles, all on board, to be delivered, being marked and numbered as in the margin, and are to be delivered in like good order and condition at the aforesaid port of Valparaiso, Sandwich Islands, or San Francisco, (the dangers of the seas only excepted,) unto Wm. L. Flitner, or to his assigns, he or they paying freight for the said lumber and shingles, as per margin, with 5 p. c. primage and average accustomed.

"In witness whereof, the master or purser of the said vessel hath affirmed to four bills of lading all of this tenor and date; one of which being accomplished, the others to stand void.

"Dated in New York, the twelfth day of November, 1849, to be received and delivered within reach of the vessel's tackles.

"WM. L. FLITNER."

Which the captain retained by the terms of agreement of association.

Fourth. That the vessel set sail from New York, and proceeded on her voyage, and delivered in due time (the delay, if any, not being in question) the whole or the greater portion of the cargo, according to the bills of lading thereof, but the amount of the cargo so delivered, and the amount of freight earned upon the same, and recoupment for any deficiency in the cargo delivered, are to be matters for reference to the commissioner.

Fifth. That the libellants, William B. Grant, William Bradstreet, William L. Flitner, Peter Grant, Thomas Grant, and Samuel C. Grant, were owners of the ship Constellation at the time of the shipment and delivery of the said cargo, and that Thomas Grant and Samuel C. Grant have since deceased; and that, at the time of the commencement of this suit, and thence up to the present time, Peter Grant is administrator of the estate of Thomas Grant, deceased, and Elizabeth F. Grant is administratrix, and William S. Grant and George Bacon are administrators of the estate of Samuel C. Grant, deceased.

BEEBE & DONOHUE,
For Respondents.

Endorsed: U. S. district court. William B. Grant and al. vs. Cornelius Poillon and al. Stipulation. Owen & Voce, proctors.

Circuit court of the United States for the district of Maine.

UNITED STATES OF AMERICA,
District of Maine, ss:

WILLIAM B. GRANT and als
CORNELIUS POILLON and al.

Be it remembered that on the sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five, at the city of Portland, in said district of Maine, before me, Thomas Amory Deblois, a commissioner in and for the district of Maine to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the circuit court of the United States for the first circuit under act of Congress in such case made and provided, personally appeared Thomas Meady, of Pittston, in said district of Maine and the county of Kennebec, and State of Maine, mariner, a witness of sound mind and lawful age, and a witness for the claimant in a certain civil suit depending in the district court of the United States in and for the southern district of New York, wherein William B. Grant and others are claimants, and Cornelius Poillon and others are respondents.

And the said Thomas Meady, being by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say as follows, namely:

I, Thomas Meady, of Pittston, in the district of Maine, in the county of Kennebec, and State of Maine, mariner, of lawful age, testify and say that I was mate of the ship Constellation, of Hallowell, in the State of Maine aforesaid, in October and November, in the year of our Lord one thousand eight hundred and forty-nine, and remained in said capacity for eight months and more next following the said October, William L. Flitner being master of said ship during said time; that during said months of October and November, at the port and city of New York, in the State of New York, we took on board the said ship a cargo consisting of lumber and bricks; that the said lumber consisted of boards, shingles, and frame timber; that we finished loading said ship about the thirteenth day of November aforesaid, and sailed with the same on board said ship from said New York, bound to Valparaiso, from thence to the Sandwich Islands and San Francisco, on said thirteenth day of November.

That we arrived in said ship at said San Francisco on the thirteenth day of the following June, and delivered the whole of said cargo at said San Francisco in good order and condition, having finished unloading the same on or about the first day of the following July; and that I remained mate until a few days before she was wholly discharged, and know that the whole of said cargo was discharged at said San Francisco, although the discharging was not

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entirely completed until a few days after I ceased to be mate of said ship.

THOMAS MEADY.

Witness' fees, travel 100 miles	$5 00
Att'ce 1 day	1 50
Commissioner's fees	3 00
	$9 50

UNITED STATES OF AMERICA,
District of Maine, ss:

I, Thomas Amory Deblois, a commissioner duly appointed by the circuit court of the United States for the district of Maine, in the first circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness resides more than one hundred miles distant from the southern district of New York.

I further certify, that no notification of the time and place of taking the said deposition signed by me was made out and served on the claimants or respondents, to be present at the taking of said deposition and to put interrogatories, if he or they might think fit.

I further certify, that on the sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five, I was attended by the witness, who is of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements; and after carefully reading the same to the witness he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same to the court for which the same was taken by mail, and of depositing the same for that purpose in the post office of the city of Portland,

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this sixteenth day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

THOMAS AMORY DEBLOIS,
United States Commissioner Circuit Court of the United States for the District of Maine.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

WILLIAM B. GRANT and others
vs.
CORNELIUS POILLON and others.

UNITED STATES OF AMERICA,
District of Maine.

Be it remembered, that on the twentieth day of January, in the year of our Lord one thousand eight hundred and fifty-five, at Portland, in said district of Maine, before me, Thomas Amory Deblois, a commissioner in and for the district of Maine, to take affidavits and bail in civil causes depending in the courts of the United States, appointed by the circuit court of the United States for the first circuit, under the acts of Congress in such case made and provided, personally appeared Zena H. Robinson, of Bath, in the county of Sagahadoc, in said district of Maine, a witness of sound mind and lawful age, a witness for the in a certain civil suit depending in the district court of the United States in and for the southern district of New York, wherein William B. Grant and others, claimants, and Cornelius Poillon and others, respondents; and the said Zena H. Robinson being by me first carefully examined and cautioned, and sworn to testify the whole truth, did depose and say as follows, viz:

I, Zena H. Robinson, of Bath, county of Sagahadoc, and State of Maine, and in the district of Maine, of lawful age, on oath, depose and say: That I resided in San Francisco, in California, from the month of March, A. D. 1849, to August, A. D. 1851; that my business then was that of a commission merchant, and a member of the firm of Robinson, Arnold, and Sewall; that during my residence in said San Francisco, in the year 1850, the ship Constellation, of Hallowell, arrived at that port from the port of New York, consigned to the master, William L. Flitner, who then and there consigned the cargo of said ship, to our said commission house for sale. The account of the said firm of Robinson, Arnold & Sewall, of the sale of said cargo, which consisted of lumber, was opened in June, 1850, and our said house sold on said account two hundred and thirteen thousand four hundred and nineny-seven feet of lum-

ber and thirteen thousand and six hundred shingles, besides a small lot of broken pieces of lumber, amounting to twenty-seven dollars and ninety-two cents. The gross amount of our sales of lumber and shingles by our house was fourteen thousand four hundred and fifty-nine dollars and three cents. The net amount, first deducting for expenses, charges, and commission, the *the* sum of three thousand and eighty-six dollars and ten cents, was eleven thousand three hundred and seventy-two dollars and ninety-three cents. These sales were made by us, by order of William L. Flitner, the master of said ship Constellation, and the nett proceeds were paid over to said William L. Flitner, one of said firm. One of said firm had a bill of lading of said cargo of said ship on the aforesaid voyage which we received from the said master, and which is hereunto annexed, marked A.

Z. H. ROBINSON.

Witness' fees, travel 70 miles	3 50
Attendance one day	1 50
Commissioner's fees	3 00
	$7 00

A.

Freight on said lumber to be delivered at Valparaiso, forty-five dollars p'r M. feet for lumber, and fifteen dollars p'r M. for shingles. At Sandwich Islands, fifty dollars per M. feet for lumber, and seventeen and a half dollars p'r M. for shingles. At San Francisco, fifty-five dollars per M. feet for lumber, and twenty dollars per M. for shingles.

Shipped in good order and well conditioned, by Constellation Lumber Co., on board the ship called the "Constellation," whereof Wm. L. Flitner is master, now lying in the port of New York, and bound for Valparaiso, Sandwich Islands, and San Francisco, to say: Two hundred and thirty thousand six hundred and fifty-five feet of lumber, twenty-nine thousand and seven hundred cypress shingles, all on board, to be delivered, being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the aforesaid port of Valparaiso, Sandwich Islands, and San Francisco, (the dangers of the seas only excepted,) unto Wm. L. Flitner, or his assigns, he or they paying freight for the said lumber and shingles as per margin, with 5 p. c. primage and average accustomed.

In witness whereof, the master or purser of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated New York, the twelfth day of November, 1849, to be received and delivered within reach of the vessel's tackles.

WM. L. FLITNER.

Endorsed: Constellation Lumber Co., B. L., for ship Constellation.

Freight to Valparaiso.

230,655 feet lumber, at $45		$10,379 47
29,700 shingles	15	445 50
		108,24 97
5 p. c. primage		541 25
		$11,366 22

To Sandwich Islands.

230,650 feet of lumber, at $50		$11,532 75
29,700 shingles	17½	519 50
		12,052 25
5 p. c. primage		602 61
		$12,654 86

To San Francisco.

230,655 feet lumber, at $55		$12,686 02
29,700 shingles	at 20	594 00
		13,280 02
5 p. c. primage		664 00
		$13,944 02

UNITED STATES OF AMERICA,
District of Maine, ss:

I, Thomas Amory Deblois, a commissioner duly appointed by the circuit court of the United States for the district of Maine, in the first circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes, depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness

resides more than one hundred miles distant from the southern district of New York, where said action is pending.

I further certify, that no notification of the time and place of taking the said deposition signed by me was made out and served on the claimants or respondents to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the twentieth day of January, in the year of our Lord one thousand eight hundred and fifty-five, I was attended by Zena H. Robinson, the witness, who was of sound mind and lawful age; and the witness was by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by me reduced to writing in the presence of the witness, and from his statements; and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of transmitting the same to the court for which the same was taken by mail, and delivered the same for that purpose in the post office of this city of Portland.

I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this twentieth day of January, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

THOMAS AMORY DEBLOIS,
United States Commissioner for the District of Maine.

At a stated term of the district court of the United States of America for the southern district of New York, held at the City Hall, in the city of New York, on Tuesday the second day of October, in the year of our Lord one thousand eight hundred and fifty-five:

Present, the honorable Charles A. Ingersol, district judge—

WILLIAM B. GRANT et al. vs. CORNELIUS POILLON and al. } 11,423.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court, that the libel in this cause be dismissed with costs to be taxed against the libellants.

Signed CHAS. A. INGERSOLL.

U. S. District Court.

William B. Grant and al.
vs.
Cornelius Poillon and al.

Please take notice that the libellants hereby appeal to the circuit court of the United States for the southern district of New York from the decree entered in this cause on the second day of October, 1855.

Dated New York, October 9th, 1855.

Yours &c.,

OWEN & VOSE.

[Endorsed:] To Cochrane & Donohue, esq., Sandford, Porter, and Striker, esq., resp. proctors. Geo. F. Betts, esq., clerk. U. S. district court, 11, 423, 425. William B. Grant and al. vs. Cornelius Poillon and al. Notice of appeal. Owen & Vose, appl'ts' att'y. Filed October 10, 1855. To George F. Betts, esq., clerk.

Circuit Court of the United States,
For the Southern District of New York.

Petition of appeal.

William B. Grant, William Bradstreet, William L. Flitner, Peter Grant, in his own right and as administrator of Thomas Grant, deceased, Elizabeth F. Grant, administratrix, William S. Grant and George Bacon, administrators of the estate of Samuel C. Grant, deceased, owners of the American ship Constellation, libellants and appellants,
vs.
Cornelius Poillon, Richard Poillon, James L. Varick, impleaded with H. Johnson, Hicks, Bailey, William Y. Clark, Dean W. W. Hinchen, C. H. Clark, and D. D. Miller, respondents and appellees.

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To the honorable the circuit court of the United States for the southern district of New York in the second circuit.

The petition of William B. Grant and others, the above-named appellants, respectively sheweth, That on or about the 24th day of April, 1854, the above-named libellants exhibited their libel in the district court of the United States for the southern district of New York, against the above-named respondents, claiming over fifty dollars in a cause of contract, civil and maratime, alleging, among other things, that for the reasons therein specified, there was due from said respondents to the libellants the sum of $2,449 $\frac{99}{000}$, and praying among other things, for the reason therein mentioned, that process might issue out of said court against such respondents in personam, &c.

That process in personam and against the respondents having issued out of said court, and having been personally served on the respondents, Cornelius Poillon, Richard Poillon, James L. Varick, and D. D. Miller, the said Cornelius Poillon, Richard Poillon, and James L. Varick, on or about the 14th day of December, 1854, filed with the clerk of the said district court their answer to said libel, denying, among other things, that any sum was due to the libellant, and praying that said libel might be dismissed with costs; that said D. D. Miller not having appeared or answered the libel in this action, his default was entered on the 16th day of May, 1854, and the usual decree and reference made thereon.

That said libellants, on or about the 14th day of December, 1854, filed their replication to said answer, praying as in said libel they had already prayed, as by said libel, answer, and replication, on file in the office of the clerk of said district court, will on reference thereto more fully appear.

That said cause came on to be heard on the proofs and testimony adduced by the respective parties before the Hon. Charles A. Ingersoll, judge of said district court, on the 24th day of September, 1855, and the said judge having advised thereon, on or about the 2d day of October, 1855, made a decree therein, dismissing said libel with costs.

And your petitioners are advised and insist that said decree is erroneous, because the libellants were entitled to recover of the respondents the sum claimed by them in said libel.

And your petitioners, for these and other reasons, appeal from the whole of said decree to the next circuit court, to be held in said district; and on such appeal they intend to have the said cause heard anew in the circuit court, on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court; and they pray that the record and proceedings herein may be returned to the circuit court, and that the said decree may be reversed, or such other decree therein made as to the said circuit court shall seem just, and that the appellees may be condemned to

pay to the appellants the sum demanded in said libel, and their costs and expenses in the premises.

OWEN & VOSE,
Proctors for Appellants.

Endorsed: 11,423, 425, U. S. circuit court, William B. Grant and als. vs. Cornelius Poillon and als. Impld. Petition of appeal. Owen & Vorse, appl'ts proctors. Filed October 16th, 1855. To George F. Betts, esq'r, clerk.

OF THE UNITED STATES OF AMERICA,
For the Southern District of New York, in the Second Circuit.

Bond for costs.

WILLIAM B. GRANT and others, libellants and appellants,
vs.
CORNELIUS POILLON and others, respondents and appellees.

Know all men by these presents, that we, Elisha Bacon and John W. Goin, are held and firmly bound unto the above-named respondents and appellees, in the sum of five hundred dollars, to be paid to the said respondents, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the sixteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas the above-named libellants and appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, second circuit, to reverse the decree rendered in the above entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named libellants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

ELISHA BACON, [L. S.]
JOHN W. GOIN, [L. S.]

Sealed and delivered, and taken and acknowledged, this 16 day of October, 1855, before me,

GEO. W. MORTON,
U. S. Comss'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Elisha Bacon and John W. Goin, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

ELISHA BACON,
JOHN W. GOIN.

Sworn to this sixteenth day of October, A. D. 1855, before me,

GEO. W. MORTON,
U. S. Com.

[Endorsed:] Vol. 11, page 423, 425, U. S. district court. William B. Grant and al., libellants and appellants, vs. Cornelius Poillon and al., resp. and appellees. Bond for cost on appeal. Owen & Vose, lib't and appl'ts' proctors. Filed this 16 day of October, 1855.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Wednesday, the tenth day of September, in the year of our Lord one thousand eight hundred and fifty-six:

Present, the honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

WM. B. GRANT and others, libellants and appellants,
vs.
CORNELIUS POILLON and others, resp'ts and appellees.

This cause being called in its order on the calendar:

Ordered hearing.

Mr. Owen reads from the apostles the evidence on the part of the lib'ts.

Mr. Beebe reads from the apostles the evidence on the part of respondents.

Mr. Goodrich argues the part of the libellants and appellants.

Mr. Donohue argues on the part of the resp'ts and appellees.

Mr. Beebe argues on the same side.

Mr. Owen is heard in reply.

Cur. adv. vult.

At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Friday the third day of October, in the year of our Lord one thousand eight hundred and fifty-six:

Present, the honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

WILLIAM B. GRANT, WILLIAM Bradstreet, William L. Flitner, Peter Grant, in his own right and as administrator of Thomas Grant, deceased, Elizabeth F. Grant, administratrix, and William S. Grant and George Bacon, administrators of the estate of Samuel C. Grant, deceased, owners of the American ship "Constellation," her tackle, &c., libellants and appellants,

vs.

CORNELIUS POILLON, RICHARD Poillon, James L. Varick, Henry Johnson, Gilbert E. Hicks, William S. Bailey, William Y. Clark, David Deane, William W. Henchen, Charles H. Clark, and Daniel D. Miller, respondents and appellees.

The appeal in this cause coming on to be heard on the proofs and allegations of the respective parties, and due deliberation being thereupon had, now, on motion of Charles Donohue, proctor for respondents, it is ordered, adjudged, and decreed, that the decree of the district court herein, on the 2d day of October, A. D. 1855, be and the same hereby is affirmed, with the costs of this court taxed.

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SUPREME COURT OF THE UNITED STATES.

WILLIAM B. GRANT, WILLIAM Bradstreet, William L. Flitner, Peter Grant, in his own right and as administrator of Thomas Grant, deceased, Elizabeth F. Grant, administratrix, and William S. Grant and George Bacon, administrators of the estate of *the estate of* Samuel A. Grant, deceased, owners of the American ship "Constellation," her tackle, &c., libellants and appl'nts,

vs.

CORNELIUS POILLON, RICHARD Poillon, James L. Varick, Henry Johnson, Gilbert E. Hicks, William S. Bailey, William Y. Clark, David Deane, William W. Hinchen, Chas. H. Clark, and Daniel D. Miller, respondents.

To the honorable the Supreme Court of the United States.

The appeal of William B. Grant and others, the above-named libellants and appellants, respectfully showeth, that on the 24th day of April, 1854, the above-named libellants filed their libel in the district court of the United States for the southern district of New York against the above-named respondents in a cause of affreightment, civil and maritime, for the recovery of the sum of two thousand dollars and upwards, for freight alleged to have been earned by the said ship "Constellation," upon certain lumber and shingles transported in and on board the said ship from the port of New York to the port of San Francisco, for and at the request of the defendants, in the year 1853, claiming upwards of two thousand dollars. That process in personam was against said respondents thereupon afterwards issued out of said district court, and the respondents, Cornelius Poillon, Richard Poillon, and James L. Varick, thereupon afterwards filed their answer to the said libel, and the said libellants replied thereto, and such proceedings were thereupon had in the said cause, that on the 2nd day of October, 1855, a final decree was made and pronounced therein by the said district court, wherein it was adjudged that the said libel be dismissed with costs.

And that after such final decree, your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court, that afterwards, and on the 3rd day of October, 1856, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, which said decree of the said circuit court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew; and that the said decree of the circuit court, *any* every part thereof, may be reversed and a decree made that the libellant recover of the respondents the sum claimed by them in said libel, with their costs and expenses, or such other decree as to the said Supreme Court shall seem just.

Dated New York, Oct. 3rd, 1856.

OWEN & VOSE,
Proctors for Appellants.

We admit due service of a copy of the above appeal.

C. DONOHUE,
Proct. for Respo't.

Dated New York, Oct. 3, 1856.
(Filed Oct. 4th, 1856.)

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Cornelius Poillon, Richard Poillon, James L. Varick, Henry Johnson, Gilbert E. Hicks, William S. Bailey, William Y. Clark, David Dean, William W. Henchen, Charles H. Clark, and Daniel D. Miller.

Whereas William B. Grant, William Bradstreet, William D. Flitner, Peter Grant, in his own right and as administrator of Thomas Grant, deceased, Elizabeth F. Grant, administratrix, and William S. Grant and George Bacon, administrators of the estate of Samuel C. Grant, deceased, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you against them, and have filed the security re-

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quired by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eighty-first.

SAM'L R. BETTS.

Due personal service of a copy of the within citation upon all of the respondents is hereby admitted.

Dated New York, Oct. 18, 1856.

BEEBE, DEAN, & DONOHUE,
Resp'ts' Proctors.

(Filed Oct. 20th, 1856.)